

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DARYON ROBINSON,

Plaintiff

v.

DR. NAUGHTON,

Defendant

Case No.: 3:21-cv-00210-MMD-CSD

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF No. 17

This Report and Recommendation is made to the Honorable Miranda M. Du, Chief United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Before the court is defendant Dr. Naughton's motion for summary judgment. (ECF Nos. 17, 17-1.) Plaintiff filed a response. (ECF No. 27.) Dr. Naughton filed a reply. (ECF No. 28.) The court denied Plaintiff's motion for leave to file a sur-reply. (ECF Nos. 29, 30.)

After a thorough review, it is recommended that Dr. Naughton's motion be denied.

I. BACKGROUND

Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC), proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Am. Compl., ECF No. 5.) The events giving rise to this action took place while Plaintiff was housed at Northern Nevada Correctional Center (NNCC). (*Id.*)

The court screened Plaintiff's amended complaint and allowed him to proceed with a single Eighth Amendment claim for deliberate indifference to serious medical needs against Dr. Naughton. The claim is based on allegations that Plaintiff had a lump over his left eye that he later learned was a lipoma. On February 11, 2019, Dr. Naughton performed surgery to remove

1 the lipoma, but Dr. Naughton was not a licensed surgeon, and the procedure was not performed
2 in a surgical setting with proper surgical instruments and staff, and therefore, posed an
3 unreasonable risk of harm to Plaintiff. (ECF No. 6 at 6:8-12.)

4 Dr. Naughton moves for summary judgment, arguing Plaintiff cannot demonstrate
5 Dr. Naughton was deliberately indifferent when he removed Plaintiff's lipoma. Dr. Naughton
6 also argues he is entitled to qualified immunity because he was not on clear notice his actions
7 violated Plaintiff's Eighth Amendment rights.

8 II. LEGAL STANDARD

9 The legal standard governing this motion is well settled: a party is entitled to summary
10 judgment when "the movant shows that there is no genuine issue as to any material fact and the
11 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp.*
12 *v. Cartrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)). An issue is "genuine" if the
13 evidence would permit a reasonable jury to return a verdict for the nonmoving party. *Anderson v.*
14 *Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). A fact is "material" if it could affect the outcome
15 of the case. *Id.* at 248 (disputes over facts that might affect the outcome will preclude summary
16 judgment, but factual disputes which are irrelevant or unnecessary are not considered). On the
17 other hand, where reasonable minds could differ on the material facts at issue, summary
18 judgment is not appropriate. *Anderson*, 477 U.S. at 250.

19 "The purpose of summary judgment is to avoid unnecessary trials when there is no
20 dispute as to the facts before the court." *Northwest Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
21 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted); *see also Celotex*, 477 U.S. at 323-24 (purpose
22 of summary judgment is "to isolate and dispose of factually unsupported claims"); *Anderson*, 477
23 U.S. at 252 (purpose of summary judgment is to determine whether a case "is so one-sided that

1 one party must prevail as a matter of law"). In considering a motion for summary judgment, all
2 reasonable inferences are drawn in the light most favorable to the non-moving party. *In re*
3 *Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008) (citation omitted); *Kaiser Cement Corp. v. Fischbach*
4 *& Moore Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986). That being said, "if the evidence of the
5 nonmoving party "is not significantly probative, summary judgment may be granted." *Anderson*,
6 477 U.S. at 249-250 (citations omitted). The court's function is not to weigh the evidence and
7 determine the truth or to make credibility determinations. *Celotex*, 477 U.S. at 249, 255;
8 *Anderson*, 477 U.S. at 249.

9 In deciding a motion for summary judgment, the court applies a burden-shifting analysis.
10 "When the party moving for summary judgment would bear the burden of proof at trial, 'it must
11 come forward with evidence which would entitle it to a directed verdict if the evidence went
12 uncontroverted at trial.' ... In such a case, the moving party has the initial burden of establishing
13 the absence of a genuine [dispute] of fact on each issue material to its case." *C.A.R. Transp.*
14 *Brokerage Co. v. Darden Rest., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal citations
15 omitted). In contrast, when the nonmoving party bears the burden of proving the claim or
16 defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate
17 an essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving
18 party cannot establish an element essential to that party's case on which that party will have the
19 burden of proof at trial. *See Celotex Corp. v. Cartrett*, 477 U.S. 317, 323-25 (1986).

20 If the moving party satisfies its initial burden, the burden shifts to the opposing party to
21 establish that a genuine dispute exists as to a material fact. *See Matsushita Elec. Indus. Co. v.*
22 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party need not establish a genuine
23 dispute of material fact conclusively in its favor. It is sufficient that "the claimed factual dispute

1 be shown to require a jury or judge to resolve the parties' differing versions of truth at trial."
2 *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987)
3 (quotation marks and citation omitted). The nonmoving party cannot avoid summary judgment
4 by relying solely on conclusory allegations that are unsupported by factual data. *Matsushita*, 475
5 U.S. at 587. Instead, the opposition must go beyond the assertions and allegations of the
6 pleadings and set forth specific facts by producing competent evidence that shows a genuine
7 dispute of material fact for trial. *Celotex*, 477 U.S. at 324.

8 III. DISCUSSION

9 "The government has an 'obligation to provide medical care for those whom it is
10 punishing by incarceration,' and failure to meet that obligation can constitute an Eighth
11 Amendment violation cognizable under § 1983." *Colwell v. Bannister*, 753 F.3d 1060, 1066 (9th
12 Cir. 2014) (citing *Estelle v. Gamble*, 429 U.S. 97, 103-05 (1976)).

13 A prisoner can establish an Eighth Amendment violation arising from deficient medical
14 care if he can prove that prison officials were deliberately indifferent to a serious medical need.
15 *Estelle*, 429 U.S. at 104. A claim for deliberate indifference involves the examination of two
16 elements: "the seriousness of the prisoner's medical need and the nature of the defendant's
17 response to that need." *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *rev'd on other*
18 *grounds*, *WMX Tech, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997); *see also Akhtar v. Mesa*, 698
19 F.3d 1202, 1213 (9th Cir. 2012) (quoting *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)).
20 "A 'serious' medical need exists if the failure to treat a prisoner's condition could result in further
21 significant injury or the 'unnecessary and wanton infliction of pain.'" *McGuckin*, 974 F.2d at
22 1059 (citing *Estelle*, 429 U.S. at 104); *see also Akhtar*, 698 F.3d at 1213.

1 If the medical need is "serious," the plaintiff must show that the defendant acted with
2 deliberate indifference to that need. *Estelle*, 429 U.S. at 104; *Akhtar*, 698 F.3d at 1213 (citation
3 omitted). "Deliberate indifference is a high legal standard." *Toguchi v. Chung*, 391 F.3d 1051,
4 1060 (9th Cir. 2004). Deliberate indifference entails something more than medical malpractice or
5 even gross negligence. *Id.* Inadvertence, by itself, is insufficient to establish a cause of action
6 under section 1983. *McGuckin*, 974 F.2d at 1060. Instead, deliberate indifference is only present
7 when a prison official "knows of and disregards an excessive risk to inmate health or safety; the
8 official must both be aware of the facts from which the inference could be drawn that a
9 substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*,
10 511 U.S. 825, 837 (1994); *see also Akhtar*, 698 F.3d at 1213 (citation omitted).

11 Deliberate indifference exists when a prison official "den[ies], delay[s] or intentionally
12 interfere[s] with medical treatment, or it may be shown by the way in which prison officials
13 provide medical care." *Crowley v. Bannister*, 734 F.3d 967, 978 (9th Cir. 2013) (internal
14 quotation marks and citation omitted).

15 Dr. Naughton provides a declaration that he is a licensed physician in the State of
16 Nevada, and he was employed during the relevant time period by NDOC as a senior physician at
17 NNCC. (Naughton Decl., ECF No. 17-1 ¶¶ 3, 5.) He has performed major and minor surgical
18 procedures in Minnesota and Nevada since 1977. (*Id.* ¶ 7.) He maintains that Plaintiff's lipoma
19 was removed in a procedure room built for this type of procedure, with the necessary equipment
20 to conduct this procedure, and he had two nurses present in the procedure room during the
21 procedure. (*Id.* ¶¶ 8-10.)

22 In his own declaration, Plaintiff states that during the procedure performed by
23

1 Dr. Naughton on February 11, 2019, he received no anesthetic, and there were no nurses present
2 during the entire time of the procedure. (ECF No. 27 at 10 ¶¶ 4, 5.) He also asserts that
3 Dr. Naughton did not use proper equipment nor an adequate procedure room, though his
4 declaration does not elaborate on these issues. (*Id.* ¶ 7.)

5 Plaintiff also argues that Dr. Naughton is not a licensed surgeon, though he submits only
6 inadmissible hearsay statements attributed to Nurse Melissa Michelle to support this asserted
7 fact. (ECF No. 27 at 11-12.)

8 Plaintiff does not submit evidence that Dr. Naughton was required to be a licensed
9 surgeon, as opposed to a licensed physician, to perform the excision of a lipoma. Nevertheless,
10 Plaintiff presents some evidence to create a genuine dispute of material fact as to whether
11 Dr. Naughton was deliberately indifferent in performing the procedure. First, he asserts
12 Dr. Naughton did not provide any anesthetic in performing the procedure. Second, his
13 declaration contradicts Dr. Naughton's statement that there were nurses present during the
14 procedure. Neither party provides any evidence to address whether nurses were actually required
15 to be present for Dr. Naughton to perform the procedure safely and reasonably.

16 Dr. Naughton also argues he is entitled to qualified immunity because it was not clearly
17 established that any action he took was unconstitutional.

18 "In evaluating a grant of qualified immunity, a court considers whether (1) the state
19 actor's conduct violated a constitutional right and (2) the right was clearly established at the time
20 of the alleged misconduct." *Gordon v. County of Orange*, 6 F.4th 961, 967-68 (9th Cir. 2021)
21 (citing *Saucier v. Katz*, 533 U.S. 194, 200-01 (2001), *overruled in part by Pearson v. Callahan*,
22 555 U.S. 223 (2009)). "[A] court must ask whether it would have been clear to a reasonable
23

1 officer that the alleged conduct was unlawful in the situation confronted.” *Id.* at 969 (quoting
2 *Ziglar v. Abbasi*, 137 S.Ct. 1843, 1867 (2017)).

3 It was clearly established that deliberate indifference is “the unnecessary and wanton
4 infliction of pain.” *Estelle*, 429 U.S. at 104 (citation and quotation marks omitted). If a jury
5 believes Plaintiff’s version of events, it could conclude that performing an excision of a lipoma
6 above the eye without using any anesthetic and without the assistance of any medical staff rises
7 to the level of unnecessary and wanton infliction of pain. Therefore, Dr. Naughton is not entitled
8 to qualified immunity, and his motion for summary judgment should be denied.

9 IV. RECOMMENDATION

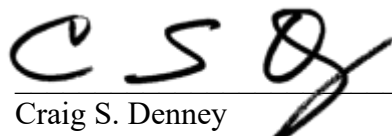
10 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING**
11 Dr. Naughton’s motion for summary judgment (ECF No. 17).

12 The parties should be aware of the following:

13 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
14 this Report and Recommendation within fourteen days of being served with a copy of the Report
15 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s
16 Report and Recommendation” and should be accompanied by points and authorities for
17 consideration by the district judge.

18 2. That this Report and Recommendation is not an appealable order and that any notice of
19 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
20 until entry of judgment by the district court.

21 Dated: April 25, 2023

22 
23 Craig S. Denney
United States Magistrate Judge